

Freedom of Information Act 2000/Environmental Information Regulations 2004

Internal Review of FOI Request by Mr Baker

Background

On 11 June 2015, Mr Baker made the following request:

Dear Norfolk County Council,

Please forward this request to the department that deals with Freedom of Information requests.

[1a]I would like to request a copy of the full and detailed selection criteria that is used by NCC/BBFN for allocation of money under state aid for upgrading cabinets in scope of BDUK to FTTC 'superfast broadband'.

[1b]I would also like to request that you publish detailed information on the proportion of cabinets upgraded by exchange under BDUK funding in accordance with [1a].

[2a]Understanding timescales can move and in respect to geographical area, Lighthouse Close, Happisburgh NR12OQE connected to cabinet 7 EAWCT. Can you please provide a transparent plan and projected timescale of its upgrade from BDUK funding.

[3a]Please publish the full contract between BDUK, BT and SCC/RCC/DCC/SCA, as well as any supporting documents and documents delivered by BT as part of their submission. If a BDUK boilerplate contract was used, please publish the original boilerplate contract in addition to the final contract signed.

[4a]I would like to know for the three most recent quarter years, the percentage take-up of superfast broadband where green cabinets (or Exchange Only lines) have been upgraded with fibre-optic cable as part of the BDUK-funded rural broadband project.

Where information is commercially sensitive, please bear in mind the FoI public interest guidelines; given the significant amount of public money invested in the framework, the fact that this framework must coexist with the Rural Community Broadband Fund, and that this contract is delivering money under state aid guidance, there is an extremely compelling public interest case for the release of the contract in full. Additionally, BT have specifically stated on numerous occasions in public, including to ministers of the Public Accounts Committee, that they would like councils to publish their documentation

On the 10 July 2015 the Council replied as follows:

Thank for your Freedom of Information request dated 11 June 2015. In answer to your questions:

[1a]I would like to request a copy of the full and detailed selection criteria that is used by NCC/BBfN for allocation of money under state aid for upgrading cabinets in scope of BDUK to FTTC 'superfast broadband'.

Norfolk County Council has let two contracts, one in 2012 and one in 2014 for Better Broadband for Norfolk. This information is available at the Better Broadband for Norfolk website, at

<http://www.betterbroadbandnorfolk.co.uk/further-info.aspx>

Please in particular refer to the ITT Part 2 documents for each contract. This is separate and additional to the BDUK assurance process.

[1b]I would also like to request that you publish detailed information on the proportion of cabinets upgraded by exchange under BDUK funding in accordance with [1a].

Norfolk County Council does not hold this specific information. However, we have set out below a table of information we do hold that contains similar information. This sets out the position without the benefit of further funding from the rural district councils, which is presently being finalised.

	Total No. of premises in district or county	Commercial coverage	BBfN original contract coverage at completion	Combined commercial and BBfN original contract coverage	BBfN second contract coverage	Combined commercial and total BBfN coverage
Breckland	61,095	30%	49%	79%	9%	87%
Broadland	57,780	56%	30%	86%	6%	92%
Great Yarmouth	47,417	66%	27%	93%	1%	95%
King's Lynn and West Norfolk	73,993	29%	54%	83%	6%	89%
North Norfolk	56,112	11%	64%	74%	10%	85%

Norwich	69,343	93%	5%	98%	1%	99%
South Norfolk	58,860	15%	61%	75%	10%	86%
Norfolk total	424,600	43%	41%	84%	6%	90%

[3a] Please publish the full contract between BDUK, BT and SCC/RCC/DCC/SCA, as well as any supporting documents and documents delivered by BT as part of their submission. If a BDUK boilerplate contract was used, please publish the original boilerplate contract in addition to the final contract signed.

Please refer to the documents published at <http://www.betterbroadbandnorfolk.co.uk/further-info.aspx>

Some of the content of the contracts has not been included, and this is because they contain commercially sensitive information. Details of the relevant exemption under the Freedom of Information Act 2000 are set out further below. Please also refer to the explanatory table to the contract on the website, giving details of the parts of the contract redacted.

[4a] I would like to know for the three most recent quarter years, the percentage take-up of superfast broadband where green cabinets (or Exchange Only lines) have been upgraded with fibre-optic cable as part of the BDUK-funded rural broadband project.

The information Norfolk County Council holds in respect of this is commercially sensitive.

Exemption Applied - Section 43(2) of the Freedom of Information Act 2000 - Commercially Sensitive Information

The information identified above is exempt under Section 43(2) of the FOIA because its disclosure would harm the commercial interests of the contractor who the information relates to. As this is a qualified exemption, it is subject to a public interest test. The purpose of this test is to ascertain whether the public interest in maintaining the exemption outweighs the public interest in disclosure. In this case, there is a clear public interest in public authorities being transparent in the way they spend public money and the decisions that underpin this. This is weighed against the fact that contractors operate in a commercial market and as such relevant sensitive information could not be shared with the Council, or would be shared to a more limited extent, if such information were routinely subject to disclosure. It would make commercial contractors less willing to contract with public authorities, and only on terms that took into account the commercial detriment to them of their sensitive information

being disclosed. It is considered that these reasons outweigh the public interest in disclosure, and, accordingly, the exemption is maintained.

Please note that if you are dissatisfied with our handling of your request you have the right of appeal through the County Council's internal complaints procedure by setting out the grounds of your appeal in writing to:

*The Compliments and Complaints Manager
FREEPOST 1H 2076
Norwich NR1 2BR
Email: complimentsandcomplaints@norfolk.gov.uk*

An appeal should be submitted within 40 working days of the date of this notice and marked "FOI Appeal".

If you are still dissatisfied after pursuing the County Council's internal complaints procedure you may apply to the Information Commissioner under Section 50 of the Act for a decision whether or not your request for information has been dealt with in accordance with the requirements of Part I of the Act.

Below are the contact details for the Information Commissioner.

*First Contact Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Email: casework@ico.gsi.gov.uk
<http://www.ico.gov.uk>*

The Appeal

On 12 July 2015 Mr Baker made the following appeal:-

Dear Norfolk County Council,

Thank you for the reply, I can confirm all request for [1a][1b][2a] and [3a] have been satisfied.

Please pass this on to the person who conducts Freedom of Information reviews.

*The specifics for point [4a] have been freely released by other councils (examples, Herefordshire and Gloucestershire council
https://www.whatdotheyknow.com/request/rural_broadband_take_up_5)*

which falls inline with ministers from the Public Accounts Committee and BT's continued view that information must be made public. BTOR has unilaterally won BDUK contracts across the UK and in most instances, no other contractors have even bid. As the state aid is being spent on infrastructure with a monopoly subsidiary, the commercial sensitivity on uptake would only be applicable to competition of Internet Service Providers ("ISP") however as I understand it, no state spend is allocated to BT's consumer division and all ISP's would be legally entitled to use the state funded infrastructure to operate as set out by OFCOM.

I would find it very peculiar for differing councils to have differing governance and stances on a state aid framework and certainly, the interpretation of commercial sensitivity must be clear and consistent across the framework. The uptake is an important indicator to the public's confidence on:

[1] Public spend on BT infrastructure is economical in the sense that public are then going on to use the new service [2] Allows transparency against the decision making of what area's are going live

I will also contact BT who would certainly provide the information to Norfolk County Council however I am writing to request an internal review of Norfolk County Council's handling of my FOI request 'Rural FTTC cabinet upgrades in scope of BDUK' - specifically and only focused on request [4a].

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.whatdotheyknow.com/request/rural_fttc_cabinet_upgrades_in_s

The Review

This review has been conducted by Caroline Hill, Information Compliance Manager in consultation with nplaw, the County Council's legal advisors.

This review will consider the response to:-

[4a]I would like to know for the three most recent quarter years, the percentage take-up of superfast broadband where green cabinets (or Exchange Only lines) have been upgraded with fibre-optic cable as part of the BDUK-funded rural broadband project.

And whether the section 43 (2) exemption was correctly applied. Section 43 of the Act sets out an exemption from the right to know if:

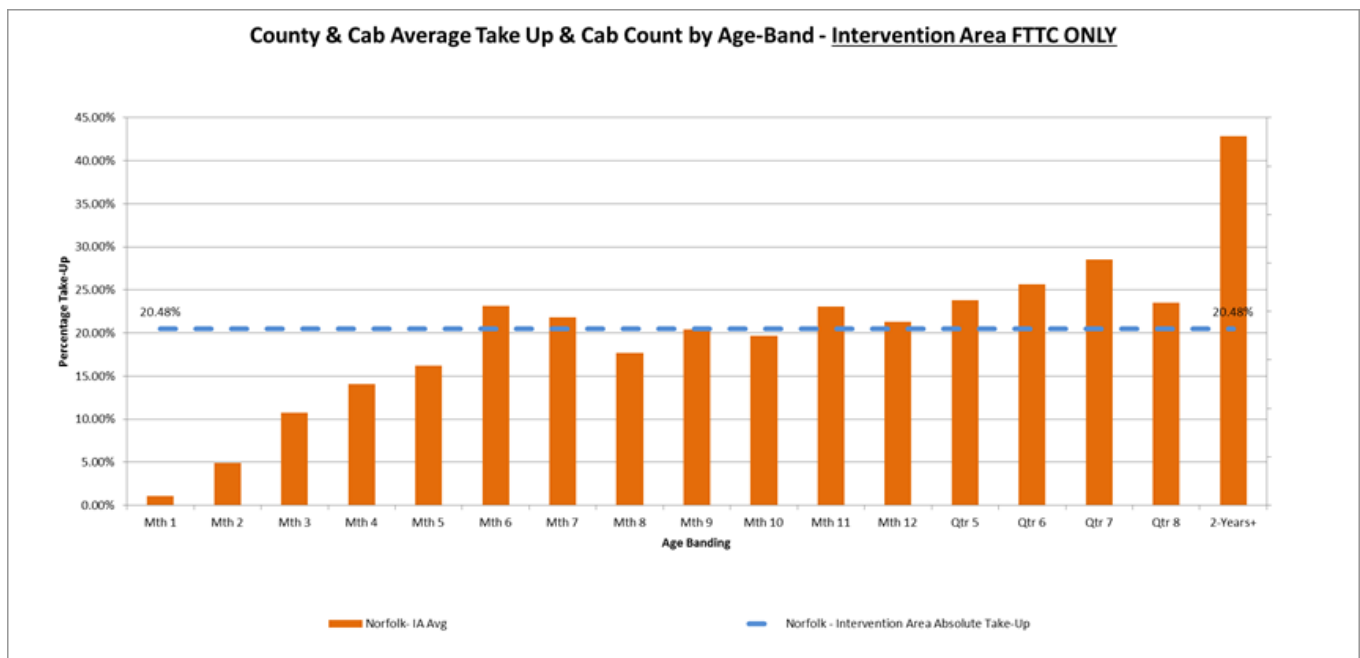
- The information requested is a trade secret, or
- Release of the information is likely to prejudice the commercial interests of any person. (A person may be an individual, a company, the public authority itself or any other legal entity)

When considering whether to release this information the council had to consider fully whether the release of information would or would be likely to harm commercial interests. As part of this consideration the council consulted the third parties who may be affected by the release of commercially sensitive information.

As part of this review the consultation of third parties was reconsidered and the council have undertaken further discussions around applying this exemption.

Following this the information requested does meet the test of being releasable under FOI as it would not impact on the council or the commercial interests of the parties involved.

Please see graph below which sets out the take up percentages across Norfolk for the superfast roll out.



The graph provides information at a specific point in time (end July 2015) and includes information for all cabinets which have been implemented as part of the Better Broadband for Norfolk Programme. The oldest cabinets went live at the end of June 2013.

The blue dotted line shows Take-up from all cabinets over the entire period, irrespective of age - 20.48%.

A further level of detail is available within the bars. Each bar depicts the levels of Take-up for all cabinets within a specific age band. Therefore the first bar shows take-up for cabinets that are up to one month old, the second bar for cabinets that are one - two months old, and so on, with the final bar showing Take-up for cabinets that have been live for 2 Years plus - over 40%

Recommendations

In conclusion it is recommended that the appeal is upheld and the information is released.